

Joint Commission on Health Care

Regulation of Surgical Assistants and Surgical Technologists Senate Bill 313 – Senator Blevins

September 18, 2012

Jaime Hoyle
Senior Staff Attorney/Health Policy Analyst

Senate Bill 313 Was Continued to 2013 and Referred to JCHC for Study

- ▶ SB 313 would establish requirements for Board of Medicine licensure of surgical assistants and certification of surgical technologists, with the following exceptions:
 - A student in an approved education program may practice under direct supervision.
 - The “completion of approved training within the uniformed services” may be accepted by the Board in place of licensure/certification.
 - Anyone practicing as a surgical assistant or surgical technologist during the six months prior to July 2012 would have been exempt from licensure/certification requirements.
- ▶ SB 313 would create an Advisory Board on Surgical Assisting and Technology.

Presentation Outline

❖ Background

2010 Study by Board of Health Professions

Additional Considerations

Policy Options

3

Composition of Surgical Teams

- ▶ Surgical team members have “distinct but overlapping roles....[R]oles...filled by a variety of licensed and unlicensed personnel.” (VA Board of Health Professions Study, July 2010, p. i.)
 - *Code of VA § 54.1-2901.6* allows licensed practitioners to delegate some tasks to unlicensed personnel; however,
 - Board of Medicine regulations prohibit practitioners from knowingly allowing “subordinates to jeopardize patient safety or provide care outside...scope of practice.” (18VAC85-20-29(A)(1))
 - Board of Nursing regulations include tasks that may not be delegated.
 - Within the operating room, State and Medicare regulations only have licensure requirements for the surgeon and for the circulating nurse (who in Virginia must be a registered nurse).

4

Regulation of Health Care Providers

- ▶ Licensure – applicants typically are required to pass a Board-approved professional education program and exam
 - A Board-issued license is typically granted in order to practice (with possible exceptions for students and “grandfathered” providers).
- ▶ Certification – applicants may be required to pass a Board-approved professional education program and exam **or** to satisfy the requirements of a certifying body (and the Board may stipulate the certifying body or bodies that are approved)
 - Unless certification to practice is mandatory, providers may be allowed to practice without having any certification.
- ▶ Registration – applicants typically are required to provide their names and practice locations only.

Source: Staff analysis of JLARC *Interim Report: Review of the Health Regulatory Boards*, HD # 31 (1999).

5

Lack of Regulation of SAs and STs

- ▶ Currently, there are no regulatory requirements placed on individuals who perform as surgical assistants or surgical technologists in Virginia.
- ▶ In the absence of regulatory requirements in Virginia:
 - Most surgical assistants (SAs) and surgical technologists (STs) have not pursued formal voluntary certification.

6

Increased Use of Unlicensed Personnel

- ▶ A primary issue related to the lack of regulation of surgical assistants and surgical technologists is the increased use of such unlicensed personnel as “assistants-at-surgery.”
 - An “assistant-at-surgery acts as the ‘co-pilot’ or ‘second set of hands’ for the surgeon. The assistant-at-surgery does not perform surgery, but performs complex surgical tasks including harvesting veins for bypass grafts, dissecting tissue, removing tissue, altering tissue, clamping and cauterizing vessels, subcutaneous sutures, suctioning, irrigating, sponging and implanting devices.” (VA Board of Health Professions Study, July 2010, p. ii.)
 - While the assistant-at-surgery role is often performed by a surgeon, physician, physician assistant, or resident, non-physician practitioners and unlicensed persons may perform that role also.

7

Experienced Surgical Technologists Sometimes Act as Assistants

- ▶ Surgical technologists typically perform a “scrub role”:
 - Prior-to-surgery activities include preparing patients for surgery, observing patients’ vital signs, and assembling and checking surgical equipment.
 - During-surgery activities include preparing and maintaining the sterile field; passing instruments, fluids and supplies to the surgeon; and operating lasers, robots, sterilizers, lights, suction apparatus, and diagnostic equipment.
- ▶ However, experienced surgical technologists sometimes perform some secondary roles associated with an assistant-at-surgery.

8

Presentation Outline

Background

❖ **2010 Study by Board of Health Professions**

Additional Considerations

Policy Options

9

Study Undertaken by Board

- ▶ The Board of Health Professions initiated an exhaustive review as requested by surgical assistants and surgical technologists and as part of the Board's ongoing review regarding regulation of "emerging health professions."
 - *Code of VA § 54.1-2510.2* authorizes the Board to "evaluate all health care professions and occupations...to consider whether each such profession and occupation should be regulated and the degree of regulation to be imposed."
 - In evaluating the need for regulation, the Board considers a number of factors including "the degree of risk from unregulated practice, the costs and benefits...and the advantages and disadvantages of the various alternatives to regulation" with regard to protecting the public. (VA Board of Health Professions Study, July 2010, p. 1.)

10

Board Findings on Degree of Risk

- ▶ “The unregulated practice of **surgical assistants** poses a high risk of harm to patients which is directly attributable to the nature of the practice.... Although surgical assistants practice with surgeons, the nature of their work requires independent judgment, knowledge and competence. Therefore **licensure** is the least restrictive means of protecting the public and ensuring the minimum qualifications of surgical assistants.”
- ▶ “The unregulated practice of **surgical technologists** poses a moderate potential harm....attributable to the nature of certain advanced tasks, and the inherent hazards and patient vulnerability associated with surgery and infection....While much of the work...is supervised...the nature of the risks and tasks require independent competence and judgment” such that **mandatory certification** should be required for surgical technologists. (VA Board of Health Professions Study, July 2010, pp. iv-v.)

11

Board Recommendations

- ▶ The Board of Health Professions recommended, in part, that the Board of Medicine should:
 - “establish a license for surgical assistants.”
 - “require mandatory certification for surgical technologists.”
 - Mandatory certification requires employers and practitioners to ensure that practitioners have the credentials required by the Board of Medicine.
 - “identify training programs and military occupational specialties that impart the necessary skills, knowledge and competence and allow military-trained surgical technologists and surgical assistants to practice in Virginia.”

12

Presentation Outline

Background

2010 Study by Board of Health Professions

❖ **Additional Considerations**

Policy Options

13

Regulation of Surgical Assistants by Other States

- ▶ Two states (Illinois and Texas) and the District of Columbia license surgical assistants.
 - Texas exempts from licensure those surgical assistants who are employed by hospitals and practice under the delegated authority of a physician.
- ▶ Kentucky is the only state that has certification requirements for surgical assistants.
 - Kentucky exempts from certification requirements those surgical assistants who are employed by hospitals and practice under the direct supervision of a registered nurse.
- ▶ Colorado is the only state that requires surgical assistants to register.

14

Regulation of Surgical Technologists by Other States

- ▶ Six states (Illinois, Indiana, New Jersey, South Carolina, Tennessee, and Texas) have certification requirements for surgical technologists.
- ▶ Colorado and Washington are the only states that require surgical technologists to register.

15

Surgical Assistants and Surgical Technologists Support Regulation

- ▶ Representatives of SAs and STs indicated that regulation of their professions would allow them to feel like a legitimate part of the surgical team and would foster collaboration.
- ▶ Furthermore, STs indicated certification would provide them a pathway to the middle class at a low cost and without requiring a four-year college degree.
 - The educational costs associated with certification are minimal.
 - Being certified can help in finding and securing employment and assist in career advancement in working to become a surgical assistant, or pursuing another health care occupation such as a physician assistant or nursing.

16

Surgical Assistants and Surgical Technologists Support Regulation

- ▶ Representatives of SAs and STs supported regulation:
 - To increase patient safety and reduce risk of harm by ensuring all persons in contact with the patient meet minimum education and training requirements.
 - To reduce health care system costs.
- ▶ The Centers for Disease Control and Prevention estimate that in American hospitals “an estimated 1.7 million infections and 99,000 associated deaths [occur]each year.”
 - 290,000 were attributed to surgical site infections, resulting in an estimated 13,088 deaths per year.
 - Surgical site infections are expensive:
 - Hospital-related costs are an estimated \$25,546 per surgical site infection.

SOURCE: PatientCareLink at <http://www.patientcarelink.org/Improving-Patient-Care/HospitalAcquired-Infections-HAI.aspx>; The Virginia Board of Health Professions, “Study into the Need to Regulate Surgical Assistants & Surgical Technologists in the Commonwealth of Virginia” (July 2014).

17

Virginia Hospital and Healthcare Association Opposes Regulation of SAs and STs

- ▶ VHHA representatives expressed opposition to regulation:
 - Hospitals are already incentivized to ensure personnel are qualified.
 - The surgical suite is already highly regulated by the Joint Commission, the Centers for Medicare and Medicaid Services, and the Virginia State Board of Health.
 - ▶ Standards and regulations specifically address the provision of surgical services.
 - By State statute, surgical assistants and surgical technologists practice under the supervision of licensed surgical staff.

18

Virginia Hospital and Healthcare Association Opposes Regulation of STs and SAs

- ▶ Health care industry costs could increase with more regulation as it would decrease flexibility within the workforce and increase the burden on current staff to manage and ensure personnel meet the new credentialing requirements.
- ▶ No specific harm realized or history of identified problems has been linked to the need for more regulation.
- ▶ Any problems with unqualified persons are already handled through personnel channels and the availability of malpractice claims.

19

Fiscal Impact of SB 313

- ▶ The fiscal impact statement for SB 313 indicated that no associated budget amendment would be necessary:
 - “It is estimated that the anticipated revenue generated by licensure of this profession will be adequate to support an additional advisory board and the costs associated with licensure and discipline.”
- ▶ Surgical assistants and surgical technologists would be responsible for the costs related to any required educational programs, professional certifications, and licensing fees.

20

Presentation Outline

Background

2010 Study by Board of Health Professions

Additional Considerations

❖ Policy Options

21

Policy Options

Option 1: Provide a written report to the Senate Committee on Education and Health without taking further action.

Option 2: Provide a written report to the Senate Committee on Education and Health with a letter indicating that the Joint Commission voted in support of certification of surgical technologists as outlined in SB 313.

Option 3: Provide a written report to the Senate Committee on Education and Health with a letter indicating that the Joint Commission voted in support of licensure of surgical assistants as outlined in SB 313.

22

Public Comment

- ▶ Written public comments on the proposed options may be submitted to JCHC by close of business on October 6, 2012.
- ▶ Comments may be submitted via:
 - E-mail: jhoyle@jchc.virginia.gov
 - Fax: 804-786-5538
 - Mail: Joint Commission on Health Care
P.O. Box 1322
Richmond, Virginia 23218
- ▶ Comments will be summarized and reported during the October 16th meeting.

▶ Website – <http://jchc.virginia.gov>